CASE NO. 83-1279

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

STATE OF FLORIDA,

Petitioner,

vs.

JOHN SCOTT MEYERS a/k/a
JOHN SCOTT WEYERS,

Respondent.

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT.

REPLY BRIEF OF PETITIONER

JIM SMITH
Attorney General

RUSSELL S. BOHN
Assistant Attorney General
111 Georgia Avenue - Suite 204
West Palm Beach, Florida 33401
Telephone (305) 837-5062

Counsel of Record for Petitioner

QUESTION PRESENTED

WHETHER THE FOURTH DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA CORRECTLY CONSTRUED THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION BY HOLDING THAT AFTER POLICE OFFICERS HAVE VALIDLY SEARCHED AND IMPOUNDED AN AUTOMOBILE, A SECOND SEARCH OF THAT SAME AUTOMOBILE, BASED ON PROBABLE CAUSE, EIGHT HOURS LATER WHILE THE AUTOMOBILE IS STILL IMPOUNDED REQUIRES A WARRANT?

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REASONS FOR GRANTING THE WRIT

In his brief in opposition to the instant petition, respondent argues that petitioner did not present to the lower courts the contentions which it has presented in this proceeding. Respondant is totally incorrect. Referring to the index which is incorporated in the petition for writ of certiorari, petitioner will invite this Court's attention to pages A-11 - A-13 of the appendix wherein the applicable portion of petitioner's brief on direct appeal to the Fourth District Court of Appeal of the State of Florida is duplicated. In that brief, as can be seen in the appendix, petitioner argued that the second search of the automobile in the instant case constituted no greater intrusion on respondent's Fourth Amendment rights than did the first search, citing and explaining as authority for its position this Court's opinions in the cases of Chambers v. Maroney, 399 U. S. 42 (1970), and United States v. Ross, 456 U. S. 798

(1982).

In the opinion of which petitioner presently seeks this Court's review (petitioner's appendix at A-1 - A-7), the fourth district summarized the issue presented by petitioner on direct appeal in the same terms which petitioner had used in its brief to that court, as follows:

> The State contends that the second search of the appellant's vehicle presented no greater intrusion on the appellant's Fourth Amendment rights than did the search incident to the appellant's arrest. (A-3)

However at the conclusion of its opinion (A-6-A-7),the fourth district acknowledged petitioner's citation to Chambers and Ross, but stated that neither of those cases "in our opinion, have any bearing on the instant issue."

It was in response to that statement that petitioner filed its motion for rehearing in the fourth district (petitioner's appendix at A-14 - A-31). The procedural rule governing motions for rehearing in Florida appellate practice, Fla.R.App.P. 9.330(a), pro-

vides that such a motion "shall state with particularity the points of law or fact which the court has overlooked or misapprehended." At the outset of its rehearing motion, petitioner explained why it felt that the Chambers and Ross cases had critical bearing on the issues in this case, contrary to the fourth district's statement. Petitioner stated there and at the conclusion of its rehearing motion (A-28) that the fourth district must have either overlooked or misapprehended the relevance of Ross and Chambers in reaching its conclusion that those cases had no bearing on this case, and for that reason argued that the rehearing motion satisfied the criterion for rehearing specified by Fla.R.App.P. 9.330(a).

Petitioner had presumed (albeit incorrectly) that the relevance of Ross and Chambers to the instant case would be readily apparent to the appellate court, based on the argument which it presented in its answer brief on appeal

(A-11 - A13). The cases and discussion contained in the body of the rehearing motion raised no new contentions in the fourth district, but attempted to illustrate further why petitioner had argued that Ross and Chambers were both relevant to and dispositive of this case.

The portion of the rehearing motion which respondent has quoted at page 2 of his brief in opposition appears at the conclusion of the rehearing motion (A-28 - A-29). That portion of the motion was not an excuse for any alleged failure to properly and timely present arguments to the appellate court; rather, it was a candid explanation by counsel of the reason why he did not elaborate further on the applicability of Ross and Chambers in the answer brief, and a further explanation of why the rehearing motion was proper under Florida procedure.

Thus, petitioner asserts that respondent's claim that petitioner did not present to the lower court the contentions which it now makes in this Court

is both unfair and unfounded. The applicability of Ross and Chambers to the instant case seemed very clear, the rehearing motion did nothing more than illustrate that point to the appellate court, and the very fact that the appellate court found those cases to have no bearing on this case further demonstrates the need for review by this Court.

Respondent argues that this is a unique case based upon unique facts, that it "involves no broad holding, no new principles of law, and no conflict with other decisions," and that therefore it is "not an appropriate case for the exercise of the Court's certiorari jurisdiction." On the contrary, the lack of conflict with other decisions demonstrates that the fourth district arrived at a uniquely incorrect application of settled principles of law to a self-evidently common set of facts, which further demonstrates the need for review here. As petitioner has argued in its petition, the fourth district't opinion in this case is binding on all trial courts in Florida, and is likely to lead courts in

Florida and elsewhere to suppress evidence in similar cases erroneously.

Finally, respondent argues that petitioner has failed to mention in its formulation of the "question presented" and in its argument that the automobile had been released to private custody by the police after the first search. This merely repeats respondent's argument below that the automobile was no longer in police custody after it was taken to "Sonny's Wrecker," an argument which obviously failed in the fourth district, since in its opinion that court stated that "the vehicle was towed to Sonny's Wrecker impoundment and there stored. It was locked in a secure area." (A-3) (Emphasis supplied.) In fact, later in its opinion the fourth district stated that "in this case the element of mobility was removed because the appellant's vehicle had been impounded." (A-4) (Emphasis supplied.) Just because the situs of the impoundment was privately owned does not mean that the automobile was no longer in police custody at the time of the search. It is

respondent, and not petitioner, who is "quibbling (belatedly) over the result of the factual determination by the state courts." There has been no misrepresentation of the facts by petitioner, and petitioner will stand by the facts as presented in its statement of the case and in its formulation of the issue.

In sum, petitioner asserts that the contentions which it has presented in this proceeding were properly presented to the state court. Petitioner supplied duplicates of its state court pleadings in the appendix to its petition in order to enable this Court to be assured of that fact. Petitioner has accurately presented the operative facts to this Court, and the uniquely erroneous application of the law to those facts by the Fourth District Court of Appeal both merits and calls for the exercise of this Court's certiorari review.

CONCLUSION

Petitioner respectfully submits that this case involves a substantial federal question which should be resolved by this Court, and respectfully requests

that this Court grant its petition for writ of certiorari to the District Court of Appeal of the State of Florida, Fourth District.

Respectfully submitted,

JIM SMITH
Attorney General

RUSSELL S. BOHN
Assistant Attorney General
111 Georgia Avenue - Suite 204
West Palm Beach, Florida 33401
(305) 837-5062

Counsel of Record for Petitioner